

8

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**JAY F. FLANAGAN, JAMES W. CARSON, )  
JOHN M. CHANEY, and DONALD W. JONES, )  
individually and on behalf of all others )  
similarly situated, )**

**Plaintiffs**

**vs.**

**No. 01 C 1541**

**ALLSTATE INSURANCE COMPANY, an )  
Illinois corporation, and the AGENT )  
TRANSITION SEVERANCE PLAN, )**

**Defendants.**

**MEMORANDUM OPINION AND ORDER**

Plaintiffs and defendants disagree as to the content of the Class Notice Form in this case. Instead of wading through their arguments one-by-one, we find our time better spent simply discussing our findings as to their general arguments, and laying out our modifications to the Notice based on the parties' various concerns.

Federal Rule of Procedure 23 imposes certain requirements on the form of class notice. The Rule provides that notice must be clearly and concisely stated in plain, easily understood language, and must convey: (1) the nature of the action; (2) the definition of the class certified; (3) the class claims, issues, or defenses; (4) that a class member may enter an appearance through counsel if the member so desires; (5) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and (6) the binding effect of a class judgment on class members under Rule 23(c)(3). Both plaintiffs' and defendants' proposed Notice

comports with these requirements. However, the parties appear unable to resolve several differences of opinion regarding the specific content and format of the notice, and have sought this court's intervention.

We begin by adopting, generally, defendant's template, since it is taken directly from the Federal Justice Center's archive of sample Notice forms. *See* The Federal Judicial Center's "Illustrative" Forms of Class Action Notices, available at <http://www.fjc.gov>. Working off that template, we have altered various components in order to alleviate most of plaintiff's concerns. Plaintiffs' main contentions are that defendant's proposed notice is too complicated in that it discusses the bifurcation of the liability and damages phases of the trial, and is too biased in its language. We agree with plaintiffs that certain of defendants' statements appear slightly tilted to encourage exclusion. However, the same can be said for plaintiffs' proposed notice, which excludes discussion of bifurcation altogether. Where noted, we have altered language we deem to be too biased.

Regarding the bifurcation issue, we do not agree that the proposed class members need not know about the separate phases of the trial. If indeed plaintiffs succeed on their liability claim, class members may be required to submit to discovery requests, depositions and participate in hearings before this court to determine the existence and/or measure of their damages. We find this to be an important element that proposed class members should be aware of when deciding whether or not to participate in this class, especially since a number of them do not reside in this state. We have set out our own construction of these sections that is both plain and comprehensive.

The remainder of our modifications deal mainly with parallel construction of headings ("you"s instead of "I"s), and organization of the sections, drawing from the structure of the FJC sample.

We will proceed by listing the various components of that template in the order we find to be most logical and noting our changes to each (including title changes):

#### **The Cover Page**

We generally adopt defendant's proposed cover page as it comports almost verbatim to the FJC sample. To the end of the statement beginning, "But you will keep..." we add "until the time limit expires on your claims." After "Read on" we add "and visit [www.walnerclassaction.com](http://www.walnerclassaction.com)."

#### **Basic Information**

1. **Why are you receiving this notice?** Unchanged.
2. **What is a class action and who is involved?** Unchanged.

#### **The Claims in the Lawsuit**

3. **What does this lawsuit complain about?** We add the section from plaintiff's proposed Notice describing what plaintiffs are seeking: "By proceeding as a class action, the Plaintiffs seek to enable themselves and the members of the Class to recover employee benefits and other related relief that they claim they should have received, but did not receive, because of Allstate's conduct."
4. **How do the Defendants respond?**
5. **Is there any money available now?** Moved from question 9.

#### **Who is in the class?**

6. **Are you a member of the class?** Changed from "Who is in the class?". Also change the word "criteria" to "definition" in both sections. Add following section: "If you are still not sure whether you are included, you can get free help at [www.walnerclassaction.com](http://www.walnerclassaction.com), or by calling or writing to the lawyers in this case, at the phone number or address listed in question 16."

**Your Rights and Options**

7. **What if you do nothing?** Moved from question 12. Add the following section: "You don't have to do anything now if you want to keep the possibility of getting money or benefit from this lawsuit. By doing nothing you are staying in the Class. If you stay in and the Defendants are found to be at fault as a result of the trial you will be notified as to how to participate in the later proceeding to determine whether you are entitled to any relief. If Plaintiffs obtain money in a settlement, you will be notified about how to participate in or be excluded from the settlement."
8. **How do you exclude yourself from this lawsuit?** Moved from question 13. Change first paragraph as follows: "If you exclude yourself from the you won't get any money or benefits from this lawsuit even if the Plaintiffs obtain them as a result of the trial or from any settlement (that may or may not be reached) between Allstate and the Plaintiffs. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action whether it is favorable or not."

**The Lawyers Representing You**

9. **Do you have a lawyer in this case?** Changed from "Who represents Class Members?" and taken from question 6.
10. **Can you hire your own lawyer?** Taken from question 8.
11. **How will the lawyers be paid?** Changed from "What is this going to cost you?" Taken from question 7.

**The Trial**

12. **How will the Court decide who is right?** Changed from "How will the claims in the lawsuit be

decided?" Taken from question 10. Change the three paragraphs to state the following:

"Unless the parties settle the case, there will be a trial to determine who is right. There is no guarantee that the Plaintiffs will win, or that there will be any money or benefits for Class Members. At this point, the Court has not expressed any opinion about the merits of this lawsuit or the likely outcome of the Class Trial. If there is a trial, the Court will only decide whether or not Allstate is at fault. The trial will not determine the amount of money, if any, that Allstate would have to pay if it is found to be at fault. If Allstate is found to be at fault, the question of money will be decided in a later proceeding that you may be required to participate in."


13. Do you have to come to the trial? Changed from "I" to "you" for consistency. Taken from question 11. Second paragraph revised to state: "If Plaintiffs win the Class Trial, you may then be required to participate in a proceeding to determine whether Allstate's conduct caused you to resign, retire or convert to independent contractor status, and, if so, how much money and/or benefits (if any) you are entitled to receive. If this is necessary, you will be notified as to how to proceed."

**Getting More Information**

14. How can you find out more? Unchanged.

**CONCLUSION**

For the foregoing reasons, the proposed Class Notice is modified as outlined above. The parties are directed to make the necessary changes and submit the amended Class Notice for approval by this court.

  
\_\_\_\_\_  
JAMES B. MORAN  
Senior Judge, U. S. District Court

Feb 18, 2007.